

REMARKS

In the August 29, 2005 Office Action, claims 1, 14, 18, 34 and 35 were rejected under 35 U.S.C. § 103 as being unpatentable over Nepustil (U.S. Patent No. 6,240,454) in view of Motoyama (U.S. Patent No. 6,581,092). Claims 1, 14, 18, 34 and 35 were also rejected for a second time in the Office Action based on a different set of references Zisapel (U.S. Patent No. 6,665,702) in view of Garg (U.S. Patent No. 6,327,677). In addition, claims 2-3, 15, 16 and 19-23 were rejected under 35 U.S.C. § 103 as being unpatentable over Nepustil in view of Motoyama and further in view of Kraft (U.S. Patent No. 6,832,239).

Request for Examiner Interview

The undersigned respectfully requests a formal Examiner Interview concerning the merits of the application before the next Office Action is issued in response to this Amendment. Such an interview will likely advance prosecution in this case by clarifying the interpretation of the claims and the applied art.

Rejections under 35 U.S.C. § 103

In the Office Action, in regard to the rejections of claims 1, 14, 18, 34 and 35 under 35 U.S.C. § 103, it is unclear which references are to be considered the best references in accordance with MPEP 707.07(g) containing all of the valid grounds of rejection applied in the rejections, because claims 1, 14, 18 and 34-35 were rejected twice by two distinct groups of references in item 8 on page 3 and in item 34 on page 10 of the Office Action, creating an undue multiplication of references; the Office Action "is not called upon to cite *all* references that may be available, but only the 'best.'" (37 CFR 1.104(c))... [m]ultiplying references ... adds to the burden and cost of prosecution and should therefore be avoided"(MPEP 904.03). It is respectfully requested that in the next Office Action, if rejections under 35 U.S.C. § 103 are maintained, that the best references be presented and that second-best rejection be withdrawn.

In items 7-17 on pages 3-5 of the Office Action, claims 1, 14, 18, 34 and 35 were rejected under 35 U.S.C. § 103(a) as unpatentable over Nepustil in view of Motoyama.

Claim 1 recites, "requesting another server device to process the service request and sending electronic mail to the user, if it is judged that a load on the server device included in the load information is higher than a predetermined value" (claim 1, lines 5-7), as described in the specification at page 21, lines 9-27; page 22, lines 1-6; page 34, lines 23-27; page 36, lines 25-27; and page 37, lines 1-12; FIG. 6; and illustrated in FIG. 15.

In item 9 on page 3, in the Office Action, it was admitted that "Nepustil did not expressly teach requesting another server" limitations as recited in claim 1. Therefore, Motoyama was cited, describing "a warning message 1150 which is generated for a particular user when the user has reached a certain percentage level of resource usage. The message is preferably sent to the end user as an e-mail message" (column 23, lines 18-21) and "step 1712 sends a warning message to the user showing the percentage level of usage ... [w]hen step 1710 determines the resource's usage is above 100%, step 1714 configures the network resource management software ... to block, or deny access to the particular resource" (column 24, lines 38-60). It is submitted that blocking or denying access when a resource is overloaded, as taught by Motoyama, teaches away from requesting another server when a resource is overloaded as recited in claim 1.

Furthermore, Nepustil, cannot be modified to be properly combined with Motoyama to arrive at the claimed limitations missing from Nepustil, because it is well settled that "[i]f proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)" (MPEP 2143.01(V)).

In this case, when resources are overloaded the primary reference, Nepustil, redirects resources, while the secondary reference, Motoyama, blocks or denies resources. Nothing was cited in either reference suggesting that one of these responses to overloaded resources should be ignored under certain conditions or circumstances. As a result, Nepustil and Motoyama, either combined together or considered individually, do not teach or suggest each limitation of claim 1. Thus, a case of *prima facie* obviousness for claim 1 was not established in the Office Action.

Independent claims 14, 18 and 34 recite redirecting "another server device" and "sending electronic mail" limitations in a manner similar to claim 1. Dependent claims 2, 3, 15, 16, 19-23 and 35 depend from claims 14, 18 and 34. Thus, claims 2, 3, 14-16, 18-23, 34 and 35 patentably distinguish over the applied art for the reasons discussed in regard to claim 1.

In items 18-32 on pages 6-9, dependent claims 2, 3, 15, 16, 19-23 and 35 were rejected under 35 U.S.C. § 103(a) as unpatentable over Nepustil in view of Motoyama and further in view of Kraft. As discussed above, dependent claims 2, 3, 15, 16, 19-23 and 35 distinguish over the applied art for the reasons discussed above in regard to claim 1.

In items 33-43 on pages 10-13 of the Office Action, claims 1, 14, 18, 34 and 35 were rejected under 35 U.S.C. § 103(a) as unpatentable over Zisapel in view of Garg.

Claim 1 recites "requesting another server device to process the service request and sending electronic mail to the user, if it is judged that a load on the server device included in the load information is higher than a predetermined value" (claim 1, lines 5-7). What was cited in Zisapel describes:

[s]till further in accordance with a preferred embodiment of the present invention the method includes monitoring the current load of each of the load balancers, and performing the directing step [sic] the current load of the closest load balancer is less than the curt (sic) load o (sic) every other of the load balancers

(column 3, lines 10-15). The scope of this cited passage is undeterminable because of apparent typographical errors. It is not clear what the "directing step" is "directing"; however, there appears to be no teaching of the judging limitation recited in claim 1, i.e., judging "that a load on the server device included in the load information is higher than a predetermined value" (claim 1, lines 5-7).

In addition, what was cited in Zisapel describes:

the selecting step determines whether or not an ISP (Internet Service Provider) is overloaded based upon a user-configurable load threshold. Furthermore, the selecting step may also select an ISP based on current load, in the event that all three of the best three choices for ISP are unavailable or overloaded

(column 6, lines 5-11). Also cited in Zisapel (column 17, lines 6-17) was a description of ISP load balancing, which fails to teach or suggest the judging limitation of claim 1. Thus, nothing was cited or found in Zisapel that teaches or suggests the judging limitation of claim 1.

It was admitted in the Office Action that "Zisapel did not expressly teach requesting another server device to process the service request and sending electronic mail to the user, if it is judged that a load on the server device included in the load information is higher than a predetermined value" (Office Action, page 10, lines 14-17). Therefore, it was alleged that Garg could be combined with Zisapel to correct the deficiencies observed in Zisapel. However, what was cited in Garg describes generation of an alarm, i.e., "if the network utilization exceeds 90 percent ... [g]enerally ... an upper threshold is provided" (column 1, line 59).

Alarm action module 141 includes multiple modules capable of communicating an alarm ... to a network administrator or other individual or system. An electronic mail generator 142 is capable of generating and sending an e-mail message identifying various information about the problem or alarm

(column 15, lines 13-34). "Step 164 then determines the appropriate action to take ... The appropriate action may include generating a pager message, an e-mail message, or activating another application or procedure" (column 15, line 52-column 16, line 3). In other words, what was cited describes generating an alert if a network load upper threshold is met, where the alert could include sending an e-mail message to a network administrator or "other individual or

system." However, nothing was cited or found in Garg that teaches or suggests "requesting another server device to process the service request" (claim 1, lines 5-7). Thus, for all of the above reasons, the Office Action failed to establish a case of *prima facie* obviousness in regard to claim 1.

Furthermore, independent claims 14, 18 and 34 describe redirecting "another server device" and "sending electronic mail" limitations in a manner similar to claim 1. Dependent claims 2, 3, 15, 16, 19-23 and 35 depend from claims 14, 18 and 34. Thus, claims 2, 3, 14-16, 18-23, 34 and 35 distinguish over Zisapel in view of Garg for reasons discussed above in regard to claim 1.

CONCLUSION

It is submitted that the references cited by the Examiner either combined together or considered individually do not teach or suggest the features of the claimed invention. Thus, it is submitted that claims 1-3, 14-16, 18-23, 34 and 35 are in condition suitable for allowance. An early action to that effect is courteously solicited.

If there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

Finally, if there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8(a)
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on January 30, 2006
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Date: January 30, 2006

